IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10139 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VITHALBHAI MANGAABHAI KOLI

Versus

DISTRICT MAGISTRATE

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Appearance:

MR YOGESH S LAKHANI for Petitioner

MR KT DAVE, ASSISTANT GOVERNMENT PLEADER for Respondent No.1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Bhavnagar passed an order on August 31, 1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social

Activities Act, 1985 (PASA Act) detaining Vithalbhai Mangabhai Koli of Sartanpar of Taluka Talaja, District Bhavnagar under the provisions of the said Act.

2. The detaining authority took into consideration 5 offences registered against the detenue under Bombay Prohibition Act. The Authority also considered the statements of 3 witnesses recorded on August 20, 1999 and came to the conclusion that the detenue is a bootlegger as defined under the provisions of the PASA Act. The Detaining Authority was satisfied about the need for exercise of powers under Section 9(2) of the PASA Act and claimed privilege of not disclosing the identity of these witnesses. The detaining authority also came to the conclusion that the petitioner is required to be immediately prevented from pursuing his bootlegging activities which are detrimental to public order. The authority considered the possibility of resorting to less drastic remedies and came to the conclusion that the detention under PASA is the only efficacious remedy that can be resorted to in order to immediately prevent the petitioner from pursuing his illegal and anti social activities.

3. The petitioner/detenue challenges the order of detention on various counts, by this petition, preferred under Article 226 of the Constitution of India. However, Mr. Gondalia, learned advocate appearing for learned advocate Mr. Lakhani for the petitioner has restricted his arguments to the ground of improper exercise of powers under Section 9(2) of the PASA Act. He submitted that the statements of the anonymous witnesses were recorded on August 20, 1999. All the statements have been verified by the detaining authority by putting one word verification on 31st August, 1999 and on that very date the detaining authority has passed the order of detention. Mr. Gondalia, therefore, submitted that there was no time for the detaining authority to undertake the entire exercise of satisfying itself about genuineness of the fear expressed by the witnesses for exercising the powers under Section 9(2) of the PASA Act. He placed reliance on the decision of this court in the case of Kalidas C. Kahar vs. State of Gujarat 1993 (2)

GLR 1659 and submitted that the petition may be allowed.

4. Mr. Dave, learned AGP has opposed this petition. He submitted that quickness on part of the detaining authority may not be considered as non-application of mind.

5. Having regard to rival side contentions, there is no dispute about the fact that the statements have been verified by the detaining authority on 31st August, 1999 and the order of detention is passed on that very date. The detaining authority has not filed any affidavit in reply to indicate as to when the proposal was received, when the witnesses were summoned for verification, at what point of time the witnesses appeared and their statements were verified, when were the other papers perused, the order prepared and signed. While exercising

powers under Section 9(2) of the PASA Act of claiming privilege, by not disclosing identity of witnesses, the detaining authority has to be subjectively satisfied about the genuineness of the fear expressed by the witnesses qua the detenue and the need for maintaining anonymity of the witnesses in public interest. In doing so, the authority has to take into consideration the character, the backgraound, the antecedents of the detenue as well as the witnesses and thereafter has to come to a positive conclusion that the fear expressed by the witnesses is correct and genuine. Mere assertion on part of the witnesses is not sufficient. This entire exercise would require and consume some time. In the instant case, the detaining authority has verified the statement on 31st August, 1999 and the order is also passed on that very date. In the absence of any affidavit in reply, it is difficult for this court to appreciate how this entire exercise was undertaken by the detaining authority on a single day and therefore it appears that the time was not enough for the authority to arrive at a genuine subjective satisfaction for the need for exercise of powers under Section 9(2) of the said Act. The result is, that the power exercised by the detaining authority is improper.

6. Improper exercise of powers under Section 9(2) of the PASA Act results into infringement of right of the detenue by making an effective representation, envisaged under Article 22(5) of the Constitution of India.

7. In view of the discussions, the subjective satisfaction by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act cannot be considered as genuine or proper. The detention order and consequently the detention, therefore, would be vitiated. The petition deserves to be allowed.

8. The petition is allowed for the foregoing reasons. The impugned order of detention passed by District Magistrate, Bhavnagar is hereby quashed and set aside. The petitioner/detenue Vithalbhai Mangabhai Koli be set at liberty forthwith from the detention, if not required in any other case. Rule made absolute. No costs.

( A.L. Dave, J.)

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